

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 29658 of 2006(E)

AGAINST THE ORDER IN IN EP 7/22005 IN
OS.92/2004 of MUNSIF COURT, VADAKARA

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PETITIONER:

K.M.MOIDHU, S/O.MAYANKUTTY, AGED 60
YEARS, KORORATH HOUSE, MALAYIL, PONMERIPARAMBIL
P.O., VILLIAPPILLY, KOILANDY TALUK,
KOZHIKODE DIST.

BY ADV. SRI.JOHN JOSEPH(ROY)

RESPONDENT:

SOUTH MALABAR GRAMIN BANK LTD.,
KUNINGAD BRANCH, BADAGARA REPRESENTED BY
THE BRANCH MANAGER, KUNINGAD, BADAGARA,
KOZHIKODE DISTRICT.

BY ADV. SRI.T.R.RAVI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the circular dated 24.6.2004 of the RBI regarding rescheduling of loans, decree, etc.

Ext.P2 true copy of the lawyer notice dated 6.3.2006 issued to the respondent.

Ext.P3 true copy of the reply issued on behalf of the respondent dated 14.4.2006.

Ext.P4 true copy of E.P.7/2005 in OS 92/2004 before the Munsiffs Court, Vadakara.

Ext.P4(a) typed copy of EP 7/05 in OS 92/04 of Munsiff's Court, Vadakara.

M.N.Krishnan, J.

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W.P(C).No.29658 of 2006

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Dated this the 16th day of October, 2007.

JUDGMENT

This Writ Petition is filed for a direction against the respondent from continuing any legal action against the petitioner in E.P.No.7 of 2005 in O.S.No.92 of 2004 before the Munsiff Court, Vadakara. Bank obtained a decree against the petitioner and it is that decree which is put into execution and the court which passed the decree had transferred the decree to Vadakara for execution.

2. Now the challenge is to the effect that the Bank has not complied with the mandate of the circulars issued by the Reserve Bank of India and therefore it is bound to stop the legal proceedings. A suit was filed against the present writ petitioner. It ended in a decree and it is that decree which is put into execution and it is a settled position of law that the Executing Court cannot go beyond the decree unless it is void. The decree

is passed by the civil court which is competent to pass it and so, there is no question of any void nature of the decree. If a person is aggrieved by a decision of a civil court his remedy is to challenge that decision, but not to take up the contention in the Execution Petition that the Bank should not have instituted a suit when the decree is put into execution.

Therefore, I do not find any merit in this Writ Petition and it is dismissed.

M.N.Krishnan,
Judge.

ess 17/10